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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

11 GREGORY MALLEY,

CASE NO.

12 *Plaintiff,*

13 vs.  
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**COMPLAINT FOR DAMAGES AND  
EQUITABLE RELIEF**

JURY TRIAL DEMANDED

1. Usury
2. Violation of 18 U.S.C. §1962(c) (RICO)
3. Violation of 18 U.S.C. §1962(d) (RICO Conspiracy)
4. Conversion
5. Wrongful Garnishment
6. Violation of Cal. Corporations Code §17704.07(r)(2)
7. Breach of Contract
8. Breach of the Implied Covenant of Good Faith and Fair Dealing
9. Fraud
10. Negligent Misrepresentation
11. Duress
12. Material Alteration of Written Instrument (Cal. Civil Code §1700)

JUDGE:

**INTRODUCTION**

1. Plaintiff Gregory Malley seeks, *inter alia*, (a) to recover his rightful share of the

proceeds from the \$11.2 million sale of real estate (the “Property”) located at 777 West Santa Clara St., San Jose, (b) to recover damages for usury, racketeering, fraud, misrepresentation, and breach of contract, and (c) equitable relief to declare that a number of improperly adopted corporate documents are null and void.

## THE PARTIES<sup>1</sup>

2. Defendant **San Jose Midtown Development LLC** (“SJMD”) is a California limited liability company headquarters in Santa Clara County. In 2014, Mr. Malley and two others contributed the Property to SJMD.
3. Defendant **Sangeeth Peruri**, a resident of Santa Clara County, leads an investment consortium that holds a majority stake in SJMD. He is principal of Sangeeth and Sindhu Peruri Living Trust Dated Nov. 5, 2009, which is a Member of SJMD.
4. Mr. Peruri is a hard-money lender who makes high-interest real estate loans that are typically collateralized by the underlying real-estate asset.
5. Defendant **Thomas Malgesini**, a resident of Santa Clara County, is a Member of SJMD. Mr. Malgesini, who belongs to Mr. Peruri’s majority group, is a hard-money lender.
6. Plaintiff **Gregory Malley**, a resident of Santa Clara County, is a Member of SJMD. Mr. Malley is not part of Mr. Peruri’s majority group.

## **JURISDICTION AND VENUE**

7. This Court has jurisdiction over this action pursuant to 18 U.S.C. §1964 (subject-matter jurisdiction) and 28 U.S.C. §1367 (supplemental jurisdiction). Venue is proper in this judicial district pursuant to 18 U.S.C. §1965 and 28 U.S.C. §1391, because each Defendant is subject to personal jurisdiction in this judicial district.

## FACTUAL ALLEGATIONS COMMON TO ALL RICO COUNTS

<sup>1</sup> Mr. Malley does not know the true names and capacities of Defendants sued in this Complaint as Does 1 through 5, and therefore sues those Defendants by fictitious names. Mr. Malley will amend this Complaint to allege the true names and capacities of Does 1 through 5, as soon as they have been ascertained. Upon information and belief, each of the Defendants named as Does 1 through 5 is responsible in some manner for the occurrence, injury, and other damages alleged in this Complaint.



1 withdrawal totaling to \$254,329.10. A portion of those funds consisted of usury  
 2 interest collected from the Borrowing Members.

3 SJMD has charged Mr. Malley “Legal Delinquent Interest” of 20 percent per  
 4 annum (totaling to **\$129,068.28**); (2) SJMD charged me “Legal 20% Bonus  
 5 Interest” (totaling to **\$17,695.58**); (3) SJMD charged me “Environmental LOC  
 6 (Interest)” of 20 percent per annum (totaling to **\$89,990.76**), and (4) SJMD  
 7 charged me “Delinquent Capital Contribution Interest” of 20 percent per annum  
 8 (totaling to **\$72,712.32**).

9 SJMD will collect the aforementioned funds from Malley as soon as it has  
 10 received the funds from the sale of the Property – and is expected to immediately  
 11 disburse those funds to the Lending Members.

12 SJMD refuses to release *any* part of Mr. Malley’s distribution from the sale of the  
 13 Property unless he waives all of his legal claims against SJMD. By holding his  
 14 money hostage, SJMD, Mr. Peruri, and his consortium *are trying to stop Mr.*  
 15 *Malley from having his day in court.*

16 The Enterprise’s activity affects interstate commerce, for Defendants have used  
 17 bank wires to collect unlawful usury interest.

## 18 GENERAL BACKGROUND

19 In September 2014, Mr. Malley signed and entered into the Amended and Restated  
 20 Operating Agreement (the “Operating Agreement”) of Defendant San Jose  
 21 Midtown Development LLC (“SJMD”).

22 SJMD Members Charles Rosendahl, J.C. Martin, and Gregory Malley contributed,  
 23 to SJMD, the real property (the “Property”) located at 777 West San Carlos Street,  
 24 San Jose, California.

25 Mr. Malley holds a 16.66 percent economic interest in SJMD.

26 Between 2014 and today, the Property’s value has increased by nearly 400 percent.

27 The Sangeeth Peruri-led group of SJMD’s majority stakeholders has forced  
 28 minority stakeholders like Mr. Malley to bear the brunt of all costs associated with

1 developing the Property – while all of the benefits of the four-fold increase in the  
 2 Property’s value have accrued to the majority stakeholders. The Peruri-led group  
 3 has done so in two ways: (1) by retiring debt payable at 10 percent, and (2)  
 4 requiring the minority Members to take out usury loans ranging from 20 to 40  
 5 percent.

6 27. In a Dec. 6, 2019 email, Mr. Peruri falsely stated to SJMD’s members that he was  
 7 a licensed real estate broker. In fact, whenever any SJMD member objected to the  
 8 usurious rate of interest charged by SJMD, Mr. Peruri would repeatedly state that  
 9 he was a licensed real estate broker who could charge above the legal rate of  
 10 interest. According to the California Department of Real Estate (DRE), Mr. Peruri  
 11 is a licensed salesperson who is *not* exempt from usury law.

12 28. Section 11.7 of the Operating Agreement (Exh. 8) bans it from being amended  
 13 unless SJMD’s Members unanimously agree to do so in writing.

14 29. Section 3.5 of the Operating Agreement bans any SJMD Member from  
 15 “withdraw[ing] any part of the Member’s Capital Contribution”, unless another  
 16 part of the Operating Agreement would allow such a capital withdrawal.

17 30. Section 5.9 of the Operating Agreement requires, *inter alia*, that all distributions  
 18 be “*split pro-rata* amongst the Members according to their Economic Interest.”<sup>2</sup>

19 31. *Pending Sale of the Property.* Recently, SJMD entered into an agreement to sell  
 20 the Property to the Danco Communities (“Danco”). Escrow is expected to close  
 21 on the Property on Mar. 18, 2020.

22 32. The closing of escrow depends on when the buyer has remitted all of the funds for  
 23 the sale. As of Mar. 17, 2020, the title company had received approximately \$10  
 24 million of the \$11.2 million required to consummate the transaction.

25 33. After escrow closes *and* the trust deed for the sale has been recorded, the funds  
 26 will be remitted to SJMD’s bank account.

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28           <sup>2</sup> Italics added.

1       34. If escrow closes by Mar. 18, 2020, the funds will likely be **received** by SJMD’s  
2       bank account by **the morning of Mar. 19, 2020.**

3       35. *Usury Loans Imposed on Certain SJMD Members.* In Jan. 2017, SJMD (a) began  
4       its practice of charging Members high interest for taking out loans and providing  
5       that interest to Members who advanced funds for SJMD to make those loans, and  
6       (b) coerced Mr. Malley to shoulder a disproportionate share of the environmental  
7       remediation costs for the Property.

8       36. To that end, then-SJMD Manager J.C. Martin applied duress to force me to agree  
9       to those terms. In a Jan. 23, 2017 email, Mr. Martin threatened to “remove[]” Mr.  
10      Malley as an SJMD Member unless Mr. Malley signed an amendment (the “First  
11      Amendment”) that would institute those changes. Faced with such duress, Mr.  
12      Malley signed the First Amendment.

13      37. In Feb. 2018, when SJMD Manager Ashish Patel was on vacation, Mr. Malley  
14      received a call from Jay Patel from SJMD Member Four Gates Capital LLC.  
15      During that call, Jay Patel asked Mr. Malley to sign a proposed second amendment  
16      (the “Proposed Second Amendment”) to the Operating Agreement.

17      38. According to Jay Patel, the Proposed Second Amendment would (a) require  
18      Members to take out high-interest loans provided by SJMD if they could not make  
19      a required contribution to SJMD (e.g., a contribution for legal expenses incurred in  
20      connection with the BAPD litigation); and (b) allow other Members to fund those  
21      high-interest loans by remitting those loan amounts to SJMD.

22      39. Mr. Malley objected to signing the Proposed Second Amendment, because it did  
23      not include language regarding the distribution which SJMD Manager Ashish  
24      Patel had previously agreed to include.

25      40. In response, Jay Patel stated that unless Mr. Malley consented to the Proposed  
26      Amendment, SJMD’s lawyers would stop their work in the BAPD litigation –  
27      which would result in SJMD’s losing the litigation.

28      41. Jay Patel gave Mr. Malley no time to consult an attorney in connection with the

Proposed Second Amendment. Faced with such pressure, Mr. Malley felt compelled to sign the Proposed Second Amendment.

42. *Second Amendment's Removal of Unanimity Requirement.* After he signed the Proposed Second Amendment, Mr. Malley learned, for the first time, that the Proposed Second Amendment eliminated Operating Agreement's requirement (at ¶11.7) that required the Members' unanimous written consent to amend any part of the Operating Agreement.

**43. *Unlawful Adoption of Second Amendment to the Operating Agreement.***

11       44. Specifically, on Feb. 15, 2018, SJMD Manager Ashish Patel sent Mr. Malley an  
12                   email. In that email, Mr. Patel stated that he was attaching the “final copy” of the  
13                   Second Amendment (hereinafter, the “Final Copy”): “Attached is a *final copy* of  
14                   [sic] 777 WSC [West San Carlos St.] Second Amendment.”<sup>3</sup>

24       48. Specifically, on July 29, 2019, SJMD Manager Ashish Patel sent Members an  
25                   email. In that email, he attached a document (the “Altered Copy”) that purported  
26                   to contain the signatures of all SJMD Members – including the purported signature

<sup>3</sup> Italics added.

of Sangeeth Peruri.

2 49. However, Mr. Peruri's purported signature was dated Apr. 10, 2019 – *over one*  
3 *year after* the Final Copy had been distributed.

4 50. SJMD thus unlawfully adopted the Second Amendment, as well as the subsequent,  
5 so-called Third and Fifth Amendments to the Operating Agreement – because all  
6 of those purported amendments were adopted *without the unanimous written*  
7 *consent* of the Members.

8 51. By unlawfully adopting those amendments, SJMD was able to impose more  
9 onerous terms on the Borrowing SJMD Members (i.e., Mr. Malley, Charles  
10 Rosendahl, and J.C. Martin), who were not part of Mr. Peruri's majority funding  
11 group.

12 52. *BAPD's Unsuccessful Bid to Purchase the Property.* In Nov. 2014, SJMD and  
13 Bay Area Property Developers, LLC ("BAPD") entered into an agreement  
14 whereby BAPD agreed to purchase the Property. After litigation ensued in  
15 connection with the sale, SJMD and BAPD entered into a settlement agreement in  
16 Apr. 2018.

17 53. Subsequently, SJMD and BAPD entered into another settlement agreement in Sept  
18 2019. Under that agreement, BAPD was given until Nov. 15, 2019 to close  
19 escrow on the sale of the Property.

20 54. BAPD did not close escrow by the close of business on Nov. 15, 2019, and did not  
21 purchase the Property.

22 55. At the time, Mr. Malley had a dispute with SJMD (discussed below) regarding the  
23 amount of his distribution from the proceeds from the sale of the Property.

24 56. Before I learned that BAPD had failed to close escrow, my counsel gave notice to  
25 SJMD that I would be seeking a TRO on Nov. 18, 2019 with respect to enjoining  
26 SJMD from distributing the sale proceeds to its Members.

27 57. Because BAPD did not close escrow, there was no longer any need to file – and  
28 Mr. Malley did not file – any request for a TRO. Instead, he repeatedly and

1 proactively tried to resolve the dispute regarding Member distributions informally.  
2 However, despite his best efforts, the dispute has not been resolved.

3 58. *Usury Loans Instituted by Unlawfully Adopted Amendments.* The Final Copy of  
4 the Second Amendment subjected the Borrowing Members (i.e., Charles  
5 Rosendahl, J.C. Martin, and Mr. Malley) to eye-popping interest rates ranging  
6 from **20 to 40 percent.**

7 59. Mr. Peruri's majority group provided the funding for the aforementioned high-  
8 interest loans.

9 60. Specifically, using the unlawfully adopted Second, Third, and Fifth Amendments,  
10 Mr. Peruri caused SJMD to require Mr. Malley and the other Borrowing Members  
11 to pay "Delinquent Capital Contribution Interest" of 20 percent, "Environmental  
12 LOC [Line of Credit] Interest" of 20 percent, "Legal 20% Bonus Interest", and  
13 "Legal Delinquent Interest" of 20 percent.

14 61. Tellingly, SJMD's Capital Account documents – and SJMD's Manager (Ashish  
15 Patel) – have explicitly labeled those four aforementioned items as "interest", and  
16 described the financing mechanism with terms that are used for loans: "borrowing  
17 members", "line of credit", and "annual rate which compounds daily". These are  
18 terms that are only associated with *loans*.

19 62. For example, in an email sent on Jan. 24, 2017, Mr. Patel stated that "we have  
20 amended our OA [Operating Agreement] to allow for a Line of Credit" – which  
21 would "allow *borrowing members* to fund their capital call requirements from  
22 contributing members." As Mr. Patel stated, the "LOC [line of credit] is secured  
23 by borrowing members [sic] economic interest", "is at a **20% annual rate** which  
24 *compounds daily*, and "*can be paid down anytime* by borrowing member".

25 63. Moreover, in a Jan. 16, 2020 email, SJMD Manager Ashish Patel confirmed that  
26 Mr. Malley was being charged interest ranging from 20 to 40 percent.

27 64. Specifically, Mr. Patel confirmed that \$146,763 was Mr. Malley's "interest  
28 charge" for SJMD's legal expenses "since 2018." To that end, Mr. Patel provided

1                   a weblink to a “[work]sheet which gives some overview of the *interest* being  
 2 charged.”<sup>4</sup> According to that worksheet, the interest rate for SJMD’s legal  
 3 expenses ranged from 20 to 40 percent.

4         65. Similarly, on Nov. 11, 2019, SJMD Manager Ashish Patel sent Mr. Malley a  
 5 Manager’s Master Capital Account statement (the “BAPD Capital Account  
 6 Statement”). At the time, it was expected that BAPD (not Danco) would acquire  
 7 the Property.<sup>5</sup>

8         66. In relevant part of that email, Mr. Patel stated: “The table [i.e., the BAPD Capital  
 9 Account Statement] does not have *updated interest due*”.<sup>6</sup>

10        67. The BAPD Capital Account Statement identifies “Delinquent Capital Contribution  
 11 Interest” (20 percent), “Environmental LOC [Line of Credit] Principal”,  
 12 “Environmental LOC [Line of Credit] Interest” (20 percent), “Legal 20% Bonus  
 13 Interest”, “Legal Delinquent Interest” (20 percent), and “Mortgage Default  
 14 Contribution Interest” (10 percent).

15        68. Similarly, the Manager’s Master Capital Account for the pending sale to Danco  
 16 (the “Danco Capital Account Statement”) identifies “Delinquent Capital  
 17 Contribution Interest” (20 percent), “Environmental LOC [Line of Credit]  
 18 Principal”, “Environmental LOC [Line of Credit] Interest” (20 percent), “Legal  
 19 20% Bonus Interest”, “Legal Delinquent Interest” (20 percent), and “Mortgage  
 20 Default Contribution Interest” (10 percent).<sup>7</sup>

21        69. In a Mar. 8, 2018 email, Member (and former SJMD Manager) J.C. Martin noted  
 22 that it was “ridiculous” that SJMD required Mr. Malley to pay “20% interest  
 23 initially”, “[i]ncreasing to 25% on March 1”, [t]o 30% on May 1, then “[t]o 40%  
 24 on June 1.”

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25        <sup>4</sup> Italics added.

26        <sup>5</sup> I am mistakenly identified in that document as “Gerhard Malley”.

27        <sup>6</sup> Italics added.

28        <sup>7</sup> I am mistakenly identified in that document as “Gerhard Malley”.

1       70. Although the Final Copy of the Second Amendment called the interest on those  
 2       aforementioned items a “Preferred Return”, the Final Copy made it clear that the  
 3       “Preferred Return” bears *all of the attributes of a loan*.

4       71. Namely, according to the Final Copy (¶7), the rate of the “Preferred Return” was  
 5       (a) based on the balance of the amount borrowed, (b) based on the “actual number  
 6       of days” that the funds were borrowed, and (c) would be “cumulative and  
 7       compounded daily.”<sup>8</sup>

8       72. *Mr. Peruri’s Reprisal for Mr. Malley’s Objection to His Consortium’s Usurious*  
 9       *Loans.* In approximately January 2020, Member (and former SJMD Manager) J.C.  
 10      Martin offered to effectively reduce Mr. Malley’s share of environmental  
 11      remediation costs for the Property (which totaled to \$219,775.48) by \$112,000 –  
 12      by applying the \$336,000 commission that he will receive from the Property’s sale  
 13      to Danco toward the total remediation costs (which totaled to \$659,326.45).

14      73. However, after Mr. Malley objected to the onerous interest rates imposed by  
 15      SJMD, Mr. Peruri caused SJMD to reject Mr. Martin’s offer. Specifically, Mr.  
 16      Peruri stated that if Mr. Malley objected to paying him interest of 40 percent, he  
 17      would cause SJMD to *eliminate* Mr. Martin’s commission – and thereby frustrate  
 18      Mr. Martin’s ability to alleviate the environmental remediation costs that were  
 19      being shouldered by SJMD’s other two minority members (Charles Rosendahl and  
 20      Mr. Malley).

21      74. *The Distribution to Which Mr. Malley Is Entitled.* Contrary to SJMD’s Danco  
 22      Capital Account Statement, Mr. Malley is entitled to a distribution of  
 23      **\$1,823,740.95**, not \$515,849.43.

24      75. *SJMD’s Accounting Irregularities.* To begin with, the MCA Spreadsheet *omits the*  
 25      *deposits – totaling to \$1,080,000* (the “BAPD Deposit”) – that were made by the  
 26      unsuccessful buyer of the Property (Bay Area Property Developers, LLC,

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 28      <sup>8</sup> Italics added.

1           “BAPD”). However, the Danco Capital Account Statement did not credit any part  
 2           of the BAPD Deposit to Mr. Malley.

3       76. Also troubling, the Danco Capital Account Statement provides no itemized  
 4           substantiation for the “Holdback”<sup>9</sup> (the “Holdback”) of \$387,000 made to the  
 5           Proceeds. According to the Danco Capital Account Statement, that amount  
 6           stemmed from “Commission, Thoits Legal, Tax Prep and Misc.” Because none of  
 7           those purported expenses were itemized, there is no justification for that amount.

8       77. Moreover, “Table 1” of the Danco Capital Account Statement states that, “around  
 9           July 10, 2018”, five SJMD members made “Capital Withdrawal[s]” totaling to  
 10           **\$254,329.10.** However, SJMD’s Operating Agreement (¶3.5) bans any SJMD  
 11           member from “withdraw[ing] any part of the Member’s Capital Contribution”,  
 12           unless another section of the Operating Agreement would allow such a capital  
 13           withdrawal.

14       78. Here, no part of the Operating Agreement allowed any member to make a “Capital  
 15           Withdrawal”, let alone any other “Capital Withdrawal” made by any other SJMD  
 16           member. Although the Danco Capital Account Statement opaquely states that  
 17            “[p]art of those payments were intramember interest [sic]”, any such payments  
 18           were made by depleting SJMD’s *capital*.

19       79. Earlier, BAPD deposited a total of \$1,086,000 in connection with its unsuccessful  
 20           bid to purchase the Property. If that amount had been credited to the SJMD  
 21           members’ capital accounts, there would have been no need for Mr. Malley to take  
 22           out a loan with respect to the Property’s environmental remediation costs – for  
 23           which SJMD (in the Danco Capital Account Statement) unlawfully required me to  
 24           pay \$218,840.57 in “Principal” and \$89,990.76 in “Interest”.

25       80. According to the Danco Capital Account Statement, \$336,000 of BAPD’s deposit  
 26           – which should have been credited to the SJMD members’ capital accounts – was

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 28       <sup>9</sup> See third item under the heading “Return of Invested Capital”.

1           paid out as interest. As we have shown, SJMD began charging usurious interest  
 2           rates after it (improperly) adopted the First Amendment to the Operating  
 3           Agreement. Therefore, all such “Capital Withdrawals” were *unlawful*.

4       81. *The Distribution Due to Mr. Malley.* Based on the following calculations, Mr.  
 5           Malley is entitled to a distribution of **\$1,823,740.95** from the Proceeds.

6       82. *First,* we begin with two undisputed facts. Namely, the Proceeds total to  
 7           **\$12,280,000** (i.e., the \$11,200.00 sale price of the Property, plus the \$1,080,000  
 8           BAPD Deposit); and Mr. Malley’s economic interest in SJMD is **16.66 percent**.

9       83. *Second,* SJMD’s total shared expenses total to **\$1,333,175.55** per the Danco  
 10           Capital Account Statement. Specifically, the amount specifically itemized for  
 11           legal expenses (labeled by the MCA Spreadsheet as “Legal Capital Call 1”) totals  
 12           to **\$515,675.55**. In addition, property tax on the Property totals to approximately  
 13           **\$187,500** (i.e., \$37,500 / yr, @ 5 yrs); and permissible interest on the \$1,800,000  
 14           note on the Property totals to approximately **\$630,000** (i.e., interest of 10 percent /  
 15           yr @ 3.5 yrs).

16       84. *Therefore,* Mr. Malley is entitled to a distribution of **\$1,823,740.95** (i.e., 16.66%  
 17           of the difference between the \$12,280,000 in Proceeds and \$1,333,175.55 in  
 18           shared expenses).

19       85. *Illegal Usury Interest.* Furthermore, because illegal usury interest has been  
 20           imposed upon me, SJMD – and any members who have reaped such interest – are  
 21           liable for treble damages totaling to **\$928,400.82**.

22       86. Here, it is undisputed that in its Danco Capital Account Statement, (1) SJMD  
 23           charged Mr. Malley “Legal Delinquent Interest” of 20 percent per annum (totaling  
 24           to **\$129,068.28**); (2) SJMD charged Mr. Malley “Legal 20% Bonus Interest”  
 25           (totaling to **\$17,695.58**); (3) SJMD charged Mr. Malley “Environmental LOC  
 26           (Interest)” of 20 percent per annum (totaling to **\$89,990.76**), and (4) SJMD  
 27           charged Mr. Malley “Delinquent Capital Contribution Interest” of 20 percent per  
 28           annum (totaling to **\$72,712.32**).



1           would have recourse to *only one source of payment*: the escrow account for the  
 2           sale of the Property *to BAPD*.

3       95. Specifically, the Joint Venture Agreement entitled Mr. Malgesini the right to  
 4           \$250,000, from my distribution, “upon the Close of Escrow” of “Escrow No.:  
 5           0616011695-SL” – the escrow account established for the BAPD sale.

6       96. Because escrow did not close on the BAPD sale, the Joint Venture Agreement is  
 7           null and void. Alternatively, the Joint Venture Agreement is unenforceable  
 8           because it contemplates usury interest.

9       97. Accordingly, SJMD has no legal authority to detain or garnish any part of Mr.  
 10           Malley’s distribution from the Proceeds.

11       98. ***SJMD’s Unlawful Impoundment of the Entirety of My Distribution.*** In his email  
 12           from Mar. 17, 2020, Mr. Patel stated that **none** of Mr. Malley’s distribution would  
 13           be released *unless*, inter alia, *Mr. Malley agreed not to sue SJMD*: “I am asking all  
 14           members to sign a waiver against the LLC *prior to a release* of each member’s  
 15           proceeds.”<sup>10</sup>

16       99. According to third paragraph of the release form (at p.1) that Mr. Patel asked Mr.  
 17           Malley to sign, Section 5.9 of the Operating Agreement allows SJMD to require  
 18           Members to sign a release before any funds are released to them. The relevant  
 19           portion of Section 5.9 was contained in the so-called Fifth Amendment to the  
 20           Operating Agreement – which was unlawfully adopted without the written consent  
 21           of all Members.

22       100. Mr. Malley did not provide his consent to, and did not sign, the Fifth Amendment.

23       101. *Troubling Discrepancy in SJMD’s Altered Capital Account Statement.* On Mar.  
 24           17, 2020, in addition to impounding nearly **\$300,000** of my distribution at the  
 25           behest of Thomas Malgesini, SJMD reduced Mr. Malley’s distribution by nearly  
 26           **\$30,000** *without providing any explanation.*

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27  
 28       <sup>10</sup> Italics added.

102. In the *altered* Danco Capital Account Statement, SJMD claimed that Mr. Malley was due a distribution of \$515,849.43 (an amount that Mr. Malley disputes).

103. However, in the Altered Danco Statement, SJMD claims that Mr. Malley is due a distribution of **\$61,160.95** – after making an *unauthorized* deduction of **\$298,465.76** for Thomas Malgesini and an authorized deduction of **\$127,000**.

104. Adding the aforementioned three amounts should yield **\$515,849.43** (the amount in the Danco Capital Account Statement), but it does not. Instead, adding those three amounts yields **\$486,626.71**.

105. Comparing both statements, there is a discrepancy *in SJMD's favor* of **\$29,222.72** for which SJMD *provided no explanation*. (\$29,222.72 is the difference between \$515,849.43 and \$486,626.71.) Thus, Mr. Malley has been deprived of **nearly \$30,000** without any explanation.

106. Mr. Malley does not have unlimited funds to pay for litigation – a fact which Mr. Peruri and other well heeled members of his majority group of stakeholders know. By refusing to release *any* part of my distribution – i.e., holding Mr. Malley’s money hostage – SJMD, Mr. Peruri, and his consortium *are trying to stop Mr. Malley from having his day in court.*

107. *SJMD's Refusal to Withhold 15 Percent of the Sale Proceeds.* SJMD has also refused to withhold 15 percent from the Proceeds (i.e., **\$1.68 million**) from SJMD members on a *pro rata* basis, that are expected to be received by SJMD on or after Mar. 18, 2020 from the sale the Property, until Mr. Malley's dispute with SJMD is resolved.

## COUNT 1

### Usury (Cal. Civ. Code §1916-3)

## *Against Defendants SJMD and Thomas Malgesini*

108. The foregoing allegations are hereby incorporated by reference.

109. SJMD is liable for usury, for it unlawfully collected, and attempted to collect usury interest from Mr. Malley. Accordingly, SJMD is liable for treble damages.

1       110. If the Joint Venture Agreement is not found to be null and void, then Mr. Malley  
2                   alternatively seeks treble damages from Mr. Malgesini.

3                   **COUNT 2**

4                   Violation of 18 U.S.C. §1962(c) (RICO)

5                   *Against Defendants SJMD and Peruri*

6       111. The foregoing allegations are hereby incorporated by reference.  
7       112. Defendants SJMD and Sangeeth Peruri are associated with the Enterprise.  
8       113. Defendants SJMD and Peruri agreed to and did conduct and participate in the  
9                   conduct of the Enterprise's affairs for the unlawful purpose of collecting unlawful  
10                  debt.  
11      114. Pursuant to and in furtherance of their unlawful scheme, Defendants SJMD and  
12                  Peruri committed acts of unlawfully collecting and attempting to collect unlawful  
13                  usury interest.  
14      115. Defendants SJMD and Peruri have directly and indirectly conducted and  
15                  participated in the conduct of the Enterprise's affairs through the pattern of  
16                  racketeering and activity described above, in violation of 18 U.S.C. §1962(c).  
17      116. As a direct and proximate result of the aforementioned racketeering activities and  
18                  violations of 18 U.S.C. §1962(c), Mr. Malley has suffered severe, debilitating  
19                  financial harm.

20                   **COUNT 3**

21                   Violation of 18 U.S.C. §1962(c) (RICO Conspiracy)

22                   *Against Defendants SJMD and Sangeeth Peruri*

23       117. The foregoing allegations are hereby incorporated by reference.  
24       118. As set forth above, Defendants SJMD and Peruri (collectively, the "RICO  
25                  Conspiracy Defendants") agreed and conspired to violate 18 U.S.C. §1962(c), by  
26                  engaging in conduct designed to unlawfully collect and attempt to collect usury  
27                  interest.  
28       119. The RICO Conspiracy Defendants have intentionally conspired and agreed to

directly and indirectly use or invest income or gain that is derived from a pattern of racketeering activity in an interstate enterprise, acquire or maintain interests in the enterprise through a pattern of racketeering activity, and conduct and participate in the conduct of the affairs of the enterprise through a pattern of racketeering activity. The RICO Conspiracy Defendants knew that their predicate acts were part of a pattern of racketeering activity, and agreed to the commission of those acts to further the schemes described above. That conduct constitutes a conspiracy to violate 18 U.S.C. §1962(c), in violation of 18 U.S.C. §1962(d).

## COUNT 4

Conversion

*Against Defendant SJMD*

15       121. Paragraphs 1 through 107 are hereby incorporated by reference.

16       122. SJMD (a) had no right to retain, from Mr. Malley, any part of his distribution from

17                   the proceeds from the sale of the Property, and (b) did not have Mr. Malley's

18                   consent to retain that money.

19       123. Nevertheless, no Defendant has released to Mr. Malley any of the money that has

20                   been unlawfully withheld from Mr. Mallley.

21       124. As a direct and proximate result, Mr. Malley has suffered severe, debilitating

22                   economic harm.

## COUNT 5

## Wrongful Garnishment

### *Against Defendant SJMD*

26 125. Paragraphs 1 through 107 are hereby incorporated by reference.

27 126. Defendant SJMD had no right to garnish, on behalf of Defendant Thomas

28 Malgesini, any part of Mr. Malley's distribution from the proceeds from the sale of

1                   the Property.

2       127. According, SJMD is liable for wrongful garnishment.

3                   **COUNT 6**

4                   Violation of Cal. Corporations Code §17704.04(r)(2)

5                   *Against Defendant SJMD*

6       128. Paragraphs 1 through 107 are hereby incorporated by reference.

7       129. Cal. Corporations Code §17704.07(r)(2) bans a limited liability company from  
8                   amending its operating agreement, unless its members unanimously agree to do so,  
9                   or (b) a written operating agreement provides otherwise.

10      130. Under its express terms (¶11.7), the Operating Agreement may only be amended if  
11                   the Members unanimously agree to do so in writing.

12      131. Defendant SJMD amended its Operating Agreement without obtaining the  
13                   unanimous approval of its Members. Specifically, the purported Second  
14                   Amendment – which SJMD labeled as the “final copy” (the “Final Copy”) and  
15                   distributed to its Members on Feb. 15, 2018 – was *not* signed by Defendant Peruri,  
16                   Defendant Malgesini, or SJMD Member Victor Chiang.

17      132. In addition, the Third and Fifth Amendments were unlawfully adopted, because  
18                   they were not approved with the unanimous, written consent of SJMD’s Members.

19      133. In so doing, SJMD violated Cal. Corporations Code §17704.07(r)(2).

20                   **COUNT 7**

21                   Breach of Contract

22                   *Against Defendant SJMD*

23      134. Paragraphs 1 through 107 are hereby incorporated by reference.

24      135. Mr. Malley entered into the Operating Agreement.

25      136. Mr. Malley performed all or substantially all of the duties required under the  
26                   Operating Agreement.

27      137. All conditions required for SJMD’s performance had occurred.

28      138. SJMD breached the Operating Agreement when it (a) amended the Operating

1                   Agreement without gaining the unanimous written consent of SJMD's Members,  
 2                   when it unlawfully adopted the Second, Third, and Fifth Amendments to the  
 3                   Operating Agreement; (b) refused to release any part of Mr. Malley's distribution  
 4                   because he refused to waive his legal claims against SJMD; (c) collected usury  
 5                   interest in violation of the provisions of the Operating Agreement, and (d)  
 6                   breached the Operating Agreement's requirement's pre-sale ban against making  
 7                   distributions to members.

8                 139. As a direct result of SJMD's wrongdoing, Mr. Malley has suffered severe,  
 9                   debilitating economic harm.

10                   **COUNT 8**

11                   Breach of the Covenant of Good Faith and Fair Dealing

12                   *Against Defendant SJMD*

13                 140. Paragraphs 1 through 107 are hereby incorporated by reference.  
 14                 141. Mr. Malley entered into the SJMD Operating Agreement, and performed all or  
 15                   substantially all of the duties required under the contracts.  
 16                 142. All conditions required for Mr. Malley's performance had occurred.  
 17                 143. Nevertheless, SJMD unfairly interfered with Mr. Malley's right to receive the  
 18                   benefits of the Operating Agreement.  
 19                 144. As a direct and proximate result, Mr. Malley suffered significant economic harm.

20                   **COUNT 9**

21                   Fraud

22                   *Against Defendant SJMD*

23                 145. Paragraphs 1 through 107 are hereby incorporated by reference.  
 24                 146. SJMD deliberately (a) concealed from its Members, including Mr. Malley, that the  
 25                   Second Amendment to the Operating Agreement had been approved *without* their  
 26                   unanimous written consent, and (b) falsely represented to its Members, including  
 27                   Mr. Malley, that it could amend the Operating Agreement without the unanimous  
 28                   written consent of the Members.

147. SJMD deliberately (a) concealed from its Members, including Mr. Malley, that it lacked the authority to impose usury interest on the Borrowing Members, and (b) falsely represented that it had the authority to impose usury interest on the Borrowing Members.

148. SJMD deliberately concealed from its Members, including Mr. Malley, that it was making forbidden distributions to Borrowing Members.

149. As a direct and proximate result, Mr. Malley has suffered severe, debilitating financial harm.

## COUNT 10

## Negligent Misrepresentation

*Against Defendant SJMD*

150. Paragraphs 1 through 107 are hereby incorporated by reference.

151. SJMD negligently (a) concealed from its Members, including Mr. Malley, that the Second Amendment to the Operating Agreement had been approved *without* their unanimous written consent, and (b) falsely represented to its Members, including Mr. Malley, that it could amend the Operating Agreement without the unanimous written consent of the Members.

152. SJMD negligently (a) concealed from its Members, including Mr. Malley, that it lacked the authority to impose usury interest on the Borrowing Members, (b) falsely represented that it had the authority to impose usury interest on the Borrowing Members, and (c) promised not to garnish any of Mr. Malley's distribution from the proceeds from the Sale of the Property.

153. SJMD negligently concealed from its Members, including Mr. Malley, that it was making prohibited distributions to the Lending Members

154. As a direct and proximate result, Mr. Malley has suffered severe, debilitating financial harm.

COUNT 11

Duress

### *Against Defendant SJMD*

155. Paragraphs 1 through 107 are hereby incorporated by reference.
156. Then-SJMD Manager J.C. Martin threatened to remove Mr. Malley from SJMD unless he agreed to sign the First Amendment to the Operating Agreement.
157. Confronted with such economic duress, Mr. Malley signed the First Amendment.
158. As a direct and proximate result, Mr. Malley suffered severe economic harm.
159. In so doing, SJMD became liable for duress.

COUNT 12

## Material Alteration of Written Instrument (Cal. Civil Code §1700)

*Against Defendant SJMD*

160. Paragraphs 1 through 107 are hereby incorporated by reference.
161. SJMD materially altered the Proposed Second Amendment to the Operating Agreement after the Final Copy of that document had been delivered to SJMD's Members, and neither sought nor obtained the prior consent of the Members to make such an alteration.
162. Consequently, the Second Amendment was unlawfully adopted by SJMD.
163. As a direct and proximate result, Mr. Malley suffered significant economic harm, and is entitled to (a) a judicial declaration that the Second Amendment is null and void, and (b) rescission of the Second Amendment.

## PRAYER FOR RELIEF

Mr. Malley asks the Court to grant the following relief:

- I. General, including treble, damages according to proof;
- II. Equitable relief, including but not limited to (a) Declarations that the First, Second, Third, and Fifth Amendments to the SJMD Operating Agreement are null and void, (b) rescission of the Second and Fifth Amendments to the Operating Agreement, and (c) a Declaration that the Joint Venture Agreement between Mr. Malley and Defendant Malgesini is null and void;

- III. Special damages according to proof;
- IV. All reasonable attorney's fees and costs, including prejudgment interest;
- V. All other relief that the Court deems just and equitable.

DATED: Mar. 18, 2020

# BUSINESS, ENERGY, AND ELECTION LAW, PC

By: /s/ Gautam Dutta

GAUTAM DUTTA, ESQ.

Attorneys for Plaintiff

GREGORY MALLEY